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Human dignity as a source, foundation, and principle of the constitutional order in the state of law

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***Abstract*— In the Preamble and art. 30 of the Constitution of the Republic of Poland, the dignity of the person is described as the core of humanity present in any human being, inherent, inalienable, and inviolable. Such constitutional characterization means that this value should be regarded as the axiological foundation of human rights. As a base of the human rights' axiology, human dignity limits the application of all norms, including constitutional ones, which undermine this value. This article presents the interpretation of the notion of "human dignity" in the context of the principle of a democratic state ruled by law. In conclusion, the author proves that human dignity is a source, foundation, and principle of the constitutional order in a state ruled by law.**

Keywords— human dignity, state of law, values in law, constitutional principles; axiological foundation of human rights (human rights' axiology).

I. ORIGIN OF THE IDEA AND PRINCIPLE OF THE RULE OF LAW

The roots of the idea of rule of law can be traced back to the views of ancient thinkers such as Plato and Aristotle. In the deliberations of these philosophers, we can read that the state system should be based on the requirement to observe the law, and thus on the idea of rule of law. This thesis was referred to in later centuries by Nicolas Machiavelli, Adam Smith, Charles Louis Montesquieu and John James Rousseau, among others. However, the fundamental ideological and conceptual assumptions concerning the rule of law on the Continent were only shaped by the Great French Revolution. These were laid out in the pages of the Declaration of the Rights of Man and of the Citizen of 26 August 1789. This document presents the then vision of a new society and state based on the idea of a liberal state, increasingly referred to as the rule of law or legal state, contrasting it with a feudal (absolutist, police) regime. The Declaration recognised the people as the supreme (sovereign) authority in the state and advocated the tripartite division of state power, and furthermore proclaimed the principle of equality of all citizens before the law, as well as civil liberties and rights such as freedom of speech, print, conscience and religion, economic freedom and inviolability of private property. Consequently, the document stipulated that the rule in the state was to be based on law and not on the will of the monarch (Kozyra 2011).

In the first decades of the nineteenth century, many representatives of European liberalism devoted their works to the problems of state and law. These included Jeremy Bentham, John Stuart Mill, Benjamin Costant and Alexis de Tocqeville. During this period, the idea of the rule of law had not yet fully taken shape. A comprehensive concept was still missing, which was only later provided by thinkers originating from the German circle of philosophers and theorists of the state such as Immanuel Kant, Wilhelm von Humbolt, Robert von Mohla, Heinrich Rudolf von Gneist (Kozyra 2011). In consequence, it is accepted in literature that in European legal culture the most complete conception of the rule of law, expressed by the word: Rechtsstaat, originates from German political and legal thought. Rechtsstaat first appeared in a work published in 1798 entitled Literatur der Statslehre, by Johann Wilhelm Petersen (known as Placidus). He used this name Placidus to express the idea of a state that safeguards human rights and ensures maximum freedom. Henceforth, the rule of law became a technical term, closely associated with a socio-political entity whose organisation was based on the aspiration to overcome the absolutism of power and to protect civil liberty. In this vein, Kant emphasised the need to restore human dignity and freedom to man, and demanded respect for equality before the law and recognition of fundamental individual freedoms. His concept envisaged the emergence of a civil society, universally governed by law, in which the role of the state is reduced to providing legal security through the creation of law and enforcing its observance. The fullest expression of the idea in

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question, however, is only found in Robert von Mohl's work entitled 'Die Polizei-Wissenschaft nach den Grundsätzen des Rechtsstaates' (Police Science According to the Principles of the Constitutional State). Mohl preached that the law, of which the constitution is the highest expression, should be clear and transparent. Mohl's achievement was to put into order the characterisation of the rule of law made so far in the literature and to supplement it with social elements. Mohl's catalogue of characteristics of the rule of law included the subjectivity of the individual, civil rights and liberties and the control of compliance with the law. Postulating a social state, he emphasised that the state and public authority should take an active stance, providing assistance and support to the individual who is unable to cope with life's difficulties on his or her own. This state intervention should, however, be subsidiary in nature. Subsequently, in the second half of the 19th century, research on the rule of law was continued by the German researcher of Danish origin, Lorenz von Stein. He created his own version of this construct under the name 'legal and social state', which was further elaborated only after the Second World War in the form of the ideas of the 'social legal state', the 'welfare state' or the 'social market economy' (Dziadzio 2005).

The concept of the rule of law, which originated in German legal culture, has been successively introduced into constitutional regimes both in Germany (especially in Prussia) and in other European states such as the Austrian Empire, France, Belgium, the Netherlands, Italy, Spain and even in Russia since the first half of the 19th century. For the first time, however, the idea in question was only fully expressed in the German constitution of 1949 as a principle of polity, in Article 28 § 2, stating that the constitutional order of the German state must correspond to 'the principles of a republican, democratic and social state of law within the meaning of this constitution'. The legal meaning of the term Rechtsstaat was already well-established in literature at the time, but it was nevertheless fully clarified and shaped by the jurisprudence and legal science in the following years as a conglomerate of many specific sub-rules defining the axiology of the rule of law. Summarising these efforts, Klaus Stern, in a rectoral speech delivered at the University of Cologne in 1971, characterised the content of this principle of polity by delineating its eight sub-rules:

1) the state and state power are based on a constitution defined as the highest-ranking legal act,
2) the relationship between citizens and the state is defined by the fundamental rights of man and citizen, being primarily manifestations of personal freedoms,
3) state power is not concentrated in a single body but is divided according to the function usually between the legislative, executive and judicial organs, whose spheres of competence allow them to inhibit and balance each other,
4) the basis and limit of all state action is the constitution and the law for the legislature, and legislative acts and regulations for the administration and courts,
5) everyone is equal before the law - equality here means combining the rule of law with the principle of democracy,
6) there are guarantees of wide-ranging legal protection accorded by independent courts within the framework of statutory proceedings; this protection also serves to counteract the actions of state authorities, including the legislature,
7) there is a system of accountability of state officials, manifest in their criminal liability and liability for damages caused to citizens or impairment of citizens' rights,
8) the concept of the rule of law is also made up of principles governing the activities of state authorities and made specific by the German Constitutional Court. These include proportionality of means and ends (Verhaeltnismaessigkeit), predictability (Vorhersehbarkeit) and calculability of state intervention (Berechenbarkeit) (Przedanska 2016). Although German jurisprudential doctrine is not in full agreement as to the content of the principle under discussion, there is a wonderful unanimity on two points. Scholars agree that the rule of law formula consists of a catalogue of both formal elements (e.g. principles of constitutionalism, rule of law, separation of powers) and substantive elements (social justice, human dignity and personal freedom), out of which the substantive ones are inviolable (Maciąg 1998).

In summary, the modern rule of law is characterised by a specific set of relations between the law, authority and citizens. It is based on the obligation of both citizens and public authorities to obey the law. Legal norms are enacted in democratic procedures and their content should be in accordance with the will of the majority (Serzhanova 2020). The idea in question is built on a certain set of values, which, expressed as detailed sub-rules of the rule of law, determine the way the state and public authority function and define the relationship between the state and the individual. Among these sub-rules the following principles are customarily distinguished: the division of state authority, legalism of the operation of public authority, hierarchical compliance of legal norms subject to the control of the constitutional court, independence and impartiality of the judiciary, equality before the law and prohibition of discrimination, absolute protection of human rights. The idea of the rule of law, in addition to the formal-legal aspect (formal rule of law), was thus permanently linked to the substantive layer, concretised in a certain system of values, relating to the legal status of the individual in the state and the relationship between the individual and the public authority. The cement of this value system, expressing an absolute guarantee for the fundamental freedoms and rights of the individual, is of course human dignity, rising to the status of a 'norm of norms' (K. Low) or the Kelsenian fundamental norm (Grundnorm) of the entire constitutional axiology (Krzynówek-Arndt 2018). The roots of the invoked human dignity can be found in ancient Greek philosophy or Judeo-Christian thought. In classical philosophy, it is emphasised that human dignity can be known and understood by comparing the human being with other entities. It is man who is endowed with attributes of reason and freedom that other living creatures do not possess. This makes man a unique entity, occupying the highest position among animals. This determines that, as a personal being, man cannot be an instrument of state power, and must be treated by public authority in a subjective manner (Krukowski 1997).

Dignity understood in this way has become the foundation of the rule of law. This is because in the catalogue of values of a rational, democratic legislator in a state of law, the axiological independence of the individual freedoms and rights regime, the axis of which is based on human dignity understood as the central value of the entire legal system, has been permanently inscribed in the sphere of at least fundamental rights (Kędzia 1990). Human dignity in the rule of law becomes the fundamental norm of the constitutional order in the logical, ontological and hermeneutic sense and the source of constitutional freedoms and rights of man and citizen (Garlicki 2015). Consequently, the specific values derived from human dignity and concretising it, expressed in individual personal and political freedoms and rights, as well as economic, social and cultural rights, serve to respect human dignity by guaranteeing the right to comprehensive development of the individual's personality (Complak 2001). Over time, human dignity has not only been recognised as an element of the axiology of the rule of law, but has risen to the status of a universally accepted supreme principle of law (constitutional principle) and has acquired the status of a separate natural and inalienable subjective right of the individual to respect for his or her dignity. In this way, the recognition of dignity of every human person has become the foundation for universal human rights (Jastrzębska-Wójcicka 2021). The history of the constitutionalisation of dignity as a constitutional principle and subjective right therefore deserves to be briefly characterised.

II. CONSTITUTIONALISATION OF HUMAN DIGNITY

The inclusion of the category of human dignity in legislative acts occurred successively after the Second World War, as a reaction to the drastic human rights violations that took place during that war. Initially, these were often preambles to acts of public international law on the protection of human rights (the UN Charter or the UN Covenants on Human Rights of 1966). It has been postulated in the literature that the category of human dignity should become the basis of a kind of ideological compromise and be more closely specified in the operative part of public international law acts. Including this value in the preambles of these documents was not enough. It was postulated that the concept of human dignity should be taken outside the bracket of substantive and formal legal solutions, becoming the cement of the already distinguished three generations of human rights. Human dignity was expressed in Article 1 of the 1948 Universal Declaration of Human Rights and, in addition, has been successively constitutionalised in many Western countries. For the first time, the principle of human dignity was introduced expressis verbis into the Irish Constitution of 1937 (in its preamble). It was then included in the constitutions of Italy (1947) and West Germany (1949). In the 1970s, it began to be universally constitutionalised, including in Sweden (1975), Greece (1975), Portugal (1976) and Spain (1978). Then, after 1989, countries that included human dignity in their constitutions were joined by most post-communist countries including Russia (1993), as well as Switzerland and Finland, both in 1999. There has thus been a consolidation in the culture of Western countries as regards the thesis that human dignity is the axiological basis of the state and law (Ramphul 1973; Zajadło 1989; Malajny 2015).

The inclusion of the principle of the 'democratic state of law' in the Polish constitutional order in 1989 meant that the Polish legislator opted for an axiology characteristic of European democratic states, an essential part of which was already respect for human dignity and life. It should be added that in the provisional constitutional period of 1989-1997, in the Polish legal order, the principle of human dignity and the inalienability of fundamental human rights found a normative dimension not only in the rule of law clause, but also in the provisions of the International Covenant on Civil Rights (Journal of Laws of 1977, No. 38, item 167) binding in our country (preamble - inherent dignity of man and Article 17 - personal goods) and in Article 23 of the Civil Code (personal interests). The conclusion acknowledging an even genetic link between the rule of law and guarantees for human dignity cannot be questioned in the light of the achievements of legal science and jurisprudence. The Polish Constitutional Tribunal has, almost from its first judgements, recognised and protected this obvious link, explaining that these values constitute an essential part of the axiology of the rule of law. The Constitutional Tribunal (in judgments of: 28 May 1986, U 1 /86; 5 November 1986, U 5/86; 26 September 1989, K 3/89 and in the resolution of 17 March 1993, W 16/92) emphasised that the Republic of Poland, as a democratic state under the rule of law, is obliged to ensure the protection of human dignity and human rights. Indeed, these values are subject to special protection in a democratic legal system and may not be violated. It is therefore beyond question that no one may be subjected to arbitrary or unlawful interference with his private life, family life, home or correspondence, or to unlawful attacks on his honour or good name, and that everyone is entitled to legal protection against such interference and attacks. The conferment of power on a state authority to encroach upon the sphere of personal rights can only take place under a legal act of statutory rank, subject to compliance with any structural principles conditioning the admissibility of such interference. Such a view determined, in case W 16/92, that allowing a research experiment without the consent of the person on whom the experiment is conducted violates the principle of a democratic state of law by violating the dignity of a human being reduced in such a case to the role of an experimental object. Conducting a research experiment that threatens the legally protected rights of the individual on whom the experiment is performed may be permissible under certain conditions in view of the expected benefits of the experiment for the enrichment of knowledge. However, the freedom of the person taking part in the experiment must never be violated in such case. Persons who are incapable of freely making decisions and expressing their will may not be the subject of research experiments.

When the 1997 Constitution of the Republic of Poland enshrined human dignity as one of the fundamental principles of the political system, its direct relationship to the rule of law was already decided. However, the constitutional status of the principle of human dignity resolved that its legal significance

could not be limited to determining the content of individual freedoms and rights. Not only the entire system of constitutional norms was subordinated to the realisation of this principle, but it has also permeated the entire system of law, creating an axiological framework for all legal acts. It influences the content and interpretation of provisions concerning the organisation of the state apparatus and the manner of its operation. It is also impossible to overlook human dignity in all matters relating to the legal status of the individual and interference in the sphere of individual freedoms and rights when interpreting and applying the law. This is because this value determines the proper direction of the interpretation and application of the law in force. In this way, the Polish legislator has determined that human dignity constitutes the source, foundation and principle of the constitutional order of the rule of law (Garlicki 2016). It therefore becomes necessary to clarify how the concept of human dignity is to be understood as an indisputable component of the axiology of the system of law and the foundation for the legal status of an individual in the state.

III. THE IMPORTANCE OF THE CONCEPT OF HUMAN DIGNITY

The notion of human dignity and the principle of polity expressing this value was enunciated in the 1997 Constitution of the Republic of Poland, first in its preamble, providing that all entities applying the Constitution are obliged to take care to preserve human dignity, and then in Article 30, in the following way: The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities. There is a consensus in literature that such grasp of human dignity implies that it must be considered in two meanings and on three levels.

The denotation of the concept of human dignity is concretised in human dignity and personal (personality-related) dignity. Human dignity derives from its inherent and inalienable nature. As such, it constitutes an "axiological-ontic category" and is applies by virtue of being human. It is independent of a person's individual characteristics, qualities or conduct. Consequently, a violation of moral or legal norms cannot deprive a person of the dignity so understood. Personal dignity, on the other hand, is directly related to a person's individual characteristics and conduct. Its possession constitutes a kind of merit achieved for good work and ethical or lawful conduct. It can therefore be possessed and developed or lost through inappropriate actions or omissions that violate ethical or legal standards (Galicki 2016). These two dimensions of the concept of dignity are also recognised by the Tribunal, however, the Tribunal does so in an unintelligible way. The Tribunal explains that human dignity is 'closest to what may be termed the law of personhood, encompassing the values of each person's mental life and all those values which define the subjective position of the individual in the society and which comprise, according to popular opinion, the respect due to every person' (Judgment of 5 March 2003, K 7/01, OTK ZU 2003, no. 3/A, item 19).

Coming back to the consideration on the three levels of dignity (Tuleja 2019), it must be stated that the first is a consequence of dignity's inherent and inalienable nature. This nature determines that the sources of dignity are to be sought in natural (non-positive) law. The natural legal status of dignity implies that its validity is independent of whether positive law sanctions (expresses) it or not. In this way, dignity acquires the rank of a supra-constitutional principle, which all norms including constitutional ones must respect and take into account under the threat of losing legitimacy. Dignity thus becomes the axiological basis of the entire legal system. The inalienable nature of dignity makes it clear that it cannot be renounced, abolished, restricted or suspended. Dignity is always due to the individual, no matter how reprehensible his or her behaviour is from an ethical point of view. The role of the state, on the other hand, becomes to protect dignity in relations between people and authorities. The second area for analysis of dignity is determined by its status as principle of the political system. This status determines that dignity is the basis of the constitutional catalogue of human rights, determining the legal-natural character of this catalogue, which in turn has a direct bearing on the definition of the relationship between the individual and the public authority and on the normative content of individual freedoms and rights and the subjective rights arising therefrom.

The constitutional obligation of public authorities to respect human dignity in its third aspect is expressed in the constitutional public subjective right of the individual with a separate content. (Judgment of the Constitutional Tribunal of 15 October 2002, SK 6/02, OTK ZU No. 5/A/2002, item 65; Judgment of the Constitutional Tribunal of 30 September 2008, K 44/07, OTK ZU No. 7/A/2008, item 126). In this way, the content of the right to dignity becomes a legal requirement to guarantee to every human being the possibility of autonomous realisation of his or her personality, as well as protection of the individual against such actions which would make him or her an object of dealings of other entities or an instrument in realisation of their objectives (especially by public authorities) (Judgment of the Constitutional Tribunal of 9 July 2009, SK 48/05, OTK ZU No. 7/A/2009, item 108). Human dignity, understood as a natural and inalienable subjective right, is the only right that cannot be restricted vis-a-vis an individual. It is therefore impossible to apply to the right to respect for dignity the rule of proportionality in order to limit the individual in respecting his or her dignity.

It is argued in literature that the constitutionalisation of human dignity, as both a constitutional value and principle of the political system, has determined four of its functions in the Polish constitutional order (Granat 2014; Łętowska 2003): to open up an act of positive law such as the Constitution to the external (and regarded as superior) legal and natural order; to establish dignity as a central and fundamental value in the system of law, underlying the process of interpretation and application of the entire Constitution; to delimit the system and scope of specific constitutional freedoms and rights of the individual; to sanction the legally separate subjective right of the individual with a claim to respect dignity.

The doctrine also emphasises a direct link between dignity

and the principles of freedom and equality before the law. The essence of dignity is considered in two aspects, positive and negative, providing a starting point for the principle of human freedom. Human freedom is delimited by the limits of the applicable law and the system of values recognised in the society. From this perspective, the positive dimension of dignity is concretised in the subjectivity (autonomy) of the individual. It thus expresses the individual's right to act according to his or her own will, the human being's entitlement to internal self-determination and to shape his or her environment. When exercising his or her freedom, the individual should always do so through the prism of (and therefore taking into account) the autonomy (dignity) of others, recognising their dignity and freedom. Freedom therefore does not imply the absence of any restrictions on the liberty of conduct. The limit of human freedom and rights is other people's right to exercise their freedom and rights. The limit of my freedom and my rights is the freedom and rights of other people. In its negative aspect, in turn, human dignity means the prohibition of being subjected to situations or treatment that could negate dignity. It should be added that since every human being is entitled to dignity to the same degree, irrespective of race, nationality, gender, education, religion or social status, dignity understood in this way becomes the starting point for sanctioning the principle of equality and the prohibition of discrimination (Zięba-Załucka 2001).

The Constitutional Tribunal also recognises and emphasises the special role of the discussed principle of the system and its complex nature. Indeed, an analysis of the Tribunal's jurisprudence by representatives of the legal sciences leads to the conclusion that the principle of dignity expressed in the Constitution "is not merely a rhetorical ornament, but delineates the axiological direction of interpretation of the entire system of law" (Potrzeszcz 2005). Already in the justification of one of the first rulings delivered after the adoption of the new Constitution, the Constitutional Tribunal emphasised that "the Constitution in the totality of its provisions gives expression to a certain objective system of values the realisation of which should serve the process of interpretation and application of individual constitutional provisions. In order to determine this system of values, the provisions on the rights and freedoms of the individual play a central role (...) Among these provisions, in turn, the principle of inherent and inalienable human dignity occupies a central place" (Judgment of the Constitutional Tribunal of 23 March 1999, K 2/98, OTK ZU No. 3/1999, item 38, similarly: in the justification of the Judgment of the Constitutional Tribunal of 22 January 2013, P 46/09, OTK ZU No. 1/A/2013, item 3).

Consequently, 'the status of a human being and a citizen in the Republic of Poland is determined primarily by the norms of Chapter II of the Constitution, i.e. by the freedoms and rights whose basis ('source') is the inherent and inalienable dignity of man (Article 30 of the Constitution). These norms define the sphere of freedoms and rights of a human being and citizen and form an essential basis for the formulation of constitutional freedoms and rights, the violation of which may be the basis of a constitutional complaint' (judgment of the Constitutional Tribunal of 29 April 2003, SK 24/02, OTK ZU No. 4/A/2003, item 33). These considerations led the Court to the conclusion that Article 30 of the Constitution belongs to the provisions 'defining the axiological and normative foundations of the entire system of law' (judgment of the Constitutional Tribunal of 27 May 2002, K 20/01, OTK ZU 2002, No. 3/A, item 34). The Polish Constitutional Tribunal, while recognising the individual's subjective right to dignity, reasoned that '[e]nsuring human and civil rights and freedoms is one of the most important constitutional goals of the Republic, and since they derive from the inherent and inalienable dignity of a human being (Article 30 of the Constitution), they do not have an ancillary or instrumental character in relation to any other constitutional solutions' (judgment of the Constitutional Tribunal of 7 November 2005, P 20/04, OTK-A 2005, no. 10, item 111). In the conclusion of its deliberations on the normative significance of the idea of dignity in the Polish legal system, the Tribunal confirmed the positions presented earlier in the literature concerning its function and its existence in a triple role as a value, a principle and a subjective right. Namely, the Court assumed that human dignity and Article 30 of the Constitution, expressing it as a value and constitutional principle, perform several functions in the constitutional order: a link between the Constitution (an act of positive law) and the legal-natural order; a determinant of the interpretation and application of the Constitution; a determinant of the system and scope of individual rights and freedoms and, finally, a subjective right of an individual with a distinct legal content (...). Article 30 of the Constitution may therefore be used as an autonomous constitutional benchmark in the case of examination of compliance with the Constitution, also in case of a constitutional complaint (...), although, probably due to the specific nature of this right, this may happen exceptionally. The contrary position, questioning the inclusion of dignity among the subjective rights of the individual, limits the constitutional protection of the individual in an interpretatively unconvincing manner" (judgment of the Constitutional Tribunal of 15 October 2002 , SK 6/02, OTK ZU No. 5/A/2002, item 65).

IV. CONCLUSIONS

In conclusion, constitutionalists today agree that the legal-natural source of human dignity resolves that the basic law does not confer dignity on the individual, but only decrees it. The inherent and inalienable dignity thus becomes a source of freedoms and rights of a human being and citizen (Sadowski 2007), the sanctioning of which in positive law constitutes one of the forms of realisation of the constitutional requirement to respect and protect dignity of an individual by the public authority and the subjective right to respect for dignity as decoded from the relevant norm (Działocha 2006). Thus, the legal system has adopted a mechanism for dual, formal and axiological, safeguarding of the individual's enjoyment of his or her rights and freedoms. Human dignity constitutes one of the most important guidelines for the interpretation of the remaining provisions not only of the Constitution but of Polish law in general. This is because the role of the Constitution is to

delimit the impassable limits of public power and to protect the individual from the abuse of power against him or her by public officials. Human dignity justifies the idea of the primacy of man over the state with the assumption that the state exists for man, his or her interest and the common interest, and not vice versa (Winczorek 2008). Dignity also justifies claims of the individual as a member of the community for a grant of rights. The presented characterisation of human dignity can be regarded as a certain constancy, however, not as a value with an already, once and for all, fixed and inviolable content. Over years, the concept of dignity has exhibited a dynamic nature. It has undergone a certain evolution along with the development of civilisation, becoming the source of an ever-widening catalogue of individual freedoms and rights, which have evolved from personal and political freedoms and rights to economic, social and cultural rights. Human dignity can therefore allow for the discovery of new contents and individual rights forming its part, today still not universally recognised, such as the absolute prohibition of the death penalty or life imprisonment, or the right to euthanasia. Literature in this context points out that 'the requirement to respect and protect human dignity can be read as a directive of dynamic interpretation of the Constitution. This provision creates the possibility of adapting the protection of human rights to threats that the creators of the Constitution did not foresee when creating specific constitutional provisions on human rights' (Wojtyczek 2001). The reservoirs of human dignity and its impact on the interpretation and application of the law are therefore not yet exhausted. Undoubtedly, in the future, the discussed value and principle of the system will still provide new arguments for the protection of individuals and their rights.

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